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No. 97-1278

In the Supreme Court of the United States

OCTOBER TERM, 1997

INMATES OF SUFFOLK COUNTY JAIL, ET AL.,
PETITIONERS

v.

RICHARD ROUSE, SHERIFF, SUFFOLK COUNTY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the requirement in 18 U.S.C. 3626(b)(3) (Supp. II 1996) that prospective relief should not be terminated under 18 U.S.C. 3626(b) (Supp. II 1996) when the relief remains necessary to remedy a violation of federal law requires a district court to consider whether a defendant may violate federal law in the future if the decree is terminated.

2. Whether 18 U.S.C. 3626(b) (Supp. II 1996) violates separation-of-powers principles or deprives petitioners of due process of law.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-31a) is reported at 129 F.3d 649. The opinion of the district court (Pet. App. 32a-68a) is reported at 952 F. Supp. 869.

JURISDICTION

The judgment of the court of appeals was entered on November 7, 1997. The petition for a writ of certiorari was filed on February 4, 1998. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 1971, a class of pre-trial detainees (petitioners) filed suit in federal district court, challenging overcrowded conditions at the Charles Street Jail in

Boston, Massachusetts. Pet. App. 33a. In 1973, the district court found that conditions at the jail violated the due process rights of pretrial detainees. *Ibid.* The court entered an injunction against double-bunking at the jail, and set a date after which no pretrial detainees could be held at the jail. *Ibid.* In 1979, the parties entered into a consent decree that required the County to close the old jail and build a new one meeting specified standards. *Id.* at 34a.

In 1985, the district court modified the consent decree to allow the County to increase the capacity of the new jail provided that single-cell occupancy was maintained. Pet. App. 34a-35a. In 1989, the County sought to modify the decree to allow double occupancy of cells. The district court granted a limited modification that left in place the single-cell requirement, and the court of appeals affirmed. *Inmates of Suffolk County Jail* v. *Kearney*, 915 F.2d 1557 (1st Cir. 1990) (Table). This Court vacated and remanded for a determination of whether there was a significant change in the law or the facts that would justify modification of the decree. *Rufo* v. *Inmates of Suffolk County Jail*, 502 U.S. 367 (1992).

On remand, the district court denied the motion to modify the decree. See *Inmates of Suffolk County Jail* v. *Rufo*, 148 F.R.D. 14 (D. Mass.), aff'd, 12 F.3d 286 (1st Cir. 1993). In 1994, however, the district court modified the decree to allow double occupancy in 100 cells as long as certain conditions were met. Pet. App. 36a-37a. The 1994 order also contemplated that the case would be "finally closed" in 1999. *Id.* at 38a-39a.

2. In June 1996, the County moved to terminate the prospective relief in the consent decree under the Prison Litigation Reform Act of 1995, Pub. L. No.

104-134, Title VIII, §§ 801-810, 110 Stat. 1321-66 to 1321-77 (PLRA). Pet. App. 39a. In the PLRA, Congress altered the standard for the entry of prospective relief in prison conditions cases involving consent decrees. See 18 U.S.C. 3626(c)(1) (Supp. II 1996). Under the PLRA, such relief "shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs." 18 U.S.C. 3626(a)(1)(A) (Supp. II 1996). Section 3626(b)(2) provides for the immediate termination of relief that does not comply with that standard. It specifies that "[i]n any civil action with respect to prison conditions, a defendant or intervener shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. 3626(b)(2) (Supp. II 1996). At the time of the decisions below, relief could nonetheless be continued if the court made written findings based on the record that "prospective relief remains necessary to correct a current or ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation." 18 U.S.C. 3626(b)(3) (Supp. II 1996). Congress has since amended Section 3626(b)(3) to permit the continuation of relief only when a court makes findings of a "current and ongoing violation." Department of Justice Appropriations Act, 1998, Pub. L. No. 105-119, Tit. I, § 123(a)(2), 111 Stat. 2470. A party may seek termination under Section 3626(b) even if the

relief "was originally granted or approved before * * * the date of the [PLRA's enactment]." PLRA, § 802(b)(1), 110 Stat. 1321-70.[1]

Petitioners opposed the County's motion, arguing that the PLRA's termination provisions are unconstitutional and that, in any event, there was a continuing violation warranting preservation of the existing relief. Pet. App. 42a. The United States intervened in the case, pursuant to 28 U.S.C. 2403(a), to defend the constitutionality of the PLRA. Pet. App. 32a-33a, 44a.

3. The district court granted the County's motion in part. The court held that its past findings did not satisfy the standards set forth in Section 3626(b)(2), and that there was no evidence of a current constitutional violation. Pet. App. 55a-56a. Based on those determinations, the court ordered that the decree "will no longer be enforced by an order of specific performance." *Id.* at 67a. The court refused, however, to "terminate the obligations" in the decree. *Ibid.* The court held that the Act did not require terminating the obligations themselves, and that if the Act were construed to require such termination, it would violate separation-of-powers principles. *Id.* at 50a-64a. The court also declined petitioners' invitation to

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[1] Under 18 U.S.C. 3626(b)(1), all decrees, including those entered with the necessary findings, are also subject to periodic review to determine whether they remain necessary to remedy a constitutional violation. Section 3626(b)(1) provides for such review two years after the entry of relief, one year after a denial of a motion to terminate, and, in the case of pre-PLRA decrees, two years after the date of enactment. 18 U.S.C. 3626(b)(1) (Supp II 1996). In April 1998, pre-PLRA decrees, like the one at issue in this case, became subject to periodic review.

make a predictive judgment about whether the County might violate the law in the future. *Id.* at 56a-57a.

4. The court of appeals affirmed in part and modified in part. Pet. App. 1a-29a. The court first held that a consent decree that fails to meet the PLRA standards must be terminated. *Id.* at 7a-10a. The court explained, however, that the decree need not be vacated. *Id.* at 27a-28a.

The court of appeals also rejected petitioners' constitutional challenges to the PLRA. The court held that applying the PLRA termination provisions to a preexisting decree does not violate the principle announced in *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), that Congress may not reopen final judgments. Pet. App. 11a-12a. The court concluded that, under *Plaut* and *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1856), "although a judgment at law is impervious to legislative assault, a forward-looking judgment in equity can succumb to legislative action if the legislature alters the underlying rule of law." Pet. App. 12a-13a. The court noted that the PLRA altered the relevant underlying law by "divest[ing] district courts of the ability to construct or perpetuate prospective relief when no violation of a federal right exists." *Id.* at 14a. "Given this shift in the relevant underlying law," the court concluded, "the termination of prospective relief pursuant to the PLRA does not amount to a legislative reopening of a final judgment." *Ibid.*

The court of appeals also held that the PLRA does not mandate a rule of decision in violation of the principle established in *United States* v. *Klein*, 80 U.S. (13 Wall.) 128 (1872). Pet. App. 14a-16a. The court explained that "the PLRA does not run afoul of

Klein because * * * courts remain free to interpret and apply the law to the facts as they discern them." *Id.* at 16a.

The court of appeals held that Section 3626(b) does not violate the Due Process Clause. Pet. App. 16a-20a. The court concluded that "frankly modifiable decrees cannot create vested rights." *Id.* at 17a. The court further held that Section 3626(b) "survives rational basis scrutiny," because it "forges a practical, commonsense linkage between a changed circumstance—the district courts' newfound inability to grant or enforce prospective relief absent a violation of a federal right—and an existing consent decree." *Id.* at 20a.

Finally, the court of appeals rejected petitioners' contention that relief should be continued under Section 3626(b)(3) based on the possibility that the County might violate the law in the future. Pet. App. 25a-27a. The court of appeals agreed with the district court that petitioners' argument rested upon an "inherently speculative claim of harm to come." *Id.* at 27a. The court added that "[i]f, in this instance, the [petitioners'] trepidation proves justified, they remain free to initiate a new round of proceedings designed to show that post-termination prison conditions actually do violate their federally protected rights." *Ibid.*

ARGUMENT

1. Petitioners contend (Pet. 15-17) that the court of appeals erred in its construction of Section 3626 (b)(3). According to petitioners, even when existing conditions do not violate the Constitution, Section 3626(b)(3) requires a court to maintain an existing decree if its dissolution is likely to lead to a viola-

tion in the future. That contention does not warrant review.

At the time of the decisions below, Section 3626 (b)(3) provided that a decree should not be terminated if it remained necessary to remedy a "current or ongoing violation." 18 U.S.C. 3626(b)(3) (Supp. II 1996). After the court of appeals' decision, however, Congress amended Section 3626(b) to provide that a decree should not be terminated when it remains necessary to remedy a "current and ongoing violation." Pub. L. No. 105-119, Tit. I, § 123(a)(2), 111 Stat. 2470. The House Conference Report on the amendment states that the word "or" was changed to "and" in order to make clear that prospective relief should not be continued "on the basis of a claim that a current condition that does not violate prisoners' Federal rights nevertheless requires a court decree to address it, because the condition is somehow traceable to a prior policy that did violate Federal rights, or that government officials are 'poised' to resume a prior violation of federal rights." H.R. Conf. Rep. No. 405, 105th Cong., 1st Sess. 133 (1997). The question presented by petitioners (Pet. 15) concerns the meaning of Section 3626(b) prior to the amendment. Now that Congress has amended Section 3626(b), that question has no continuing importance.

Moreover, whatever the correct construction of Section 3626(b)(3), the PLRA does not withdraw a court's equitable authority to issue new relief (including emergency relief) to prevent a violation of federal rights. 18 U.S.C. 3626(a)(2) (Supp. II 1996). If petitioners have evidence that a violation of their rights is imminent, they are free to seek such relief. The courts below specifically left that option open. Pet. App. 27a, 57a. Petitioners provide no basis for

concluding that the alternative avenue for relief left open by the courts below would be inadequate in this case.

2. Petitioners also contend (Pet. 17-23) that Section 3626(b) is unconstitutional. As the court below concluded (Pet. App. 10a-24a), that contention is without merit. Four courts of appeals have reached the same conclusion. *Hadix* v *Johnson*, 133 F.3d 940 (6th Cir. 1998), petition for cert. pending, No. 97-1693; *Dougan* v. *Singletary*, 129 F.3d 1424 (11th Cir. 1997), petition for cert. pending, No. 97-8120; *Gavin* v. *Branstad*, 122 F.3d 1081 (8th Cir. 1997), petition for cert. pending, No. 97-7420; *Plyler* v. *Moore*, 100 F.3d 365 (4th Cir. 1996), cert. denied, 117 S. Ct. 2460 (1997).[2] And while a panel of the Ninth Circuit has recently held that Section 3626(b)(2) violates separation-of-powers principles, *Taylor* v. *United States*, Nos. 97-16069 & 97-16071, 1998 WL 214578 (May 4, 1998), that decision does not provide a basis for granting review in this case. This Court denied a petition in *Plyler* raising essentially the same constitutional questions presented by petitioners in this case, and there is no reason for a different outcome here.

a. Petitioners err in contending (Pet. 17-21) that Section 3626(b) violates the separation-of-powers principles set forth in *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211 (1995). In *Plaut*, the Court held that Congress may not require federal courts to reopen final judgments dismissing claims for monetary re-

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[2] A panel of the Second Circuit upheld the constitutionality of Section 3626(b)(2), but construed that provision to bar only federal court enforcement of the decree. See *Benjamin* v. *Jacobson*, 124 F.3d 162, 170 (2d Cir. 1997). On December 23, 1997, the Second Circuit granted rehearing en banc in *Benjamin*.

lief. 514 U.S. at 218-219. *Plaut* did not suggest, however, that Congress is precluded from directing federal courts to modify *prospective* relief to the extent that such relief fails to conform to new legal standards. To the contrary, the Court reaffirmed its earlier decision in *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1856), which it characterized as upholding Congress's power to "alter[] the prospective effect of injunctions entered by Article III courts." *Plaut*, 514 U.S. at 232. The critical difference is that, while a final judgment on a claim for monetary relief represents "the last word of the judicial department with regard to a particular case or controversy," *id.* at 227, an injunction is always subject to modification or termination in light of a "significant change either in factual conditions or in law," *Rufo* v. *Inmates of Suffolk County Jail*, 502 U.S. 367, 384 (1992). Thus, as five circuits have concluded, Congress may not require courts to reopen final judgments on claims for monetary relief, but Congress may require courts to modify prospective relief in accordance with a change in the applicable law. *Hadix*, 133 F.3d at 942-943; *Dougan*, 129 F.3d at 1426; *Gavin*, 122 F.3d at 1085-1089; *Plyler*, 100 F.3d at 371-372; Pet. App 12a-14a.

As those courts have further concluded, Section 3626(b) falls on the constitutional side of that line. See *Hadix*, 133 F.3d at 943; *Dougan*, 129 F.3d at 1426-1427; *Gavin*, 122 F.3d at 1085-1089; *Plyler*, 100 F.3d at 372; Pet. App. 12a-14a. Section 3626(b) applies only to "prospective relief." 18 U.S.C. 3626(b) (Supp. II 1996). And Section 3626(b) requires a court to terminate such prospective relief only when the relief does not conform to Congress's new legal standard for awarding equitable relief in prison conditions cases. Prior

to the enactment of the PLRA, courts could enter a consent decree that provided for relief greater than that required by federal law. *Rufo*, 502 U.S. at 389. The PLRA alters judicial remedial authority in consent decree cases by providing that relief entered pursuant to a consent decree may "extend no further than necessary to correct the violation of the Federal right." 18 U.S.C. 3626(a) (Supp. II 1996). Consistent with *Plaut* and *Wheeling & Belmont Bridge*, Congress had authority to require district courts addressing motions to modify existing consent decrees to apply the PLRA's new remedial standard to such motions.

Petitioners contend (Pet. 19) that *Wheeling & Belmont Bridge* is distinguishable, because that case involved a change in the substantive rights of the parties, and Congress lacks authority to modify the underlying due process rights that prisoners seek to vindicate. That suggested distinction is unpersuasive. Although Congress lacks power to alter the scope of the Due Process Clause, Congress undoubtedly had authority to limit judicial remedial authority by precluding the entry of relief that is more extensive than necessary to remedy violations of the Due Process Clause. See *Yakus* v. *United States*, 321 U.S. 414, 441-442 & n.7 (1944) (upholding Congress's authority to restrict the remedial authority of courts and noting numerous instances in which Congress has exercised that authority). And, with respect to separation-of-powers principles, there is no constitutional difference between altering the court's remedial powers and altering the substantive law defining the rights of the parties. In sum, Section 3626(b) is fully consistent with the separation-of-powers principles set forth in *Plaut*.

b. Petitioners also contend (Pet. 20-23) that the PLRA unconstitutionally prescribes a rule of decision within the meaning of *United States* v. *Klein*, 80 U.S. (13 Wall.) 128 (1872). As explained by the Court in *Plaut*, 514 U.S. at 218, however, legislation does not prescribe a rule of decision within the meaning of *Klein* when it "amends applicable law" and leaves to the judiciary the task of interpreting that law and applying it to the facts. That is the situation here.

As noted above, prior to the enactment of the PLRA, a court could enter injunctive relief in a consent decree that extended further than necessary to remedy unconstitutional prison conditions. *Rufo*, 502 U.S. at 389. In enacting the PLRA, Congress has deprived district courts of that authority, and in so doing has amended the applicable law. At the same time, "courts remain free to interpret and apply the law to the facts as they discern them." Pet. App. 16a. Under the PLRA, relief may be terminated only when a court finds that the relief is more extensive than necessary to remedy a federal right. 18 U.S.C. 3626(b) (Supp. II 1996). As four circuits have concluded, *Klein* is therefore inapposite here. See *Hadix*, 133 F.3d at 943; *Gavin*, 122 F.3d at 1089; *Plyler*, 100 F.3d at 372; Pet App. 14a-16a; see *Dougan*, 129 F.3d at 1426 n.10 (not addressing *Klein* issue because it was not raised on appeal).

c. Petitioners also contend (Pet. 20-23) that Section 3626 violates the Due Process Clause. Injunctive relief, however, is always subject to modification or termination, and that principle is fully applicable to consent decrees. *Rufo*, 502 U.S. at 378. Thus, petitioners had no vested property interest protected by the Due Process Clause in the injunctive relief embodied in the consent decree. See *Landgraf* v. *USI*

Film Products., 511 U.S. 244, 273-274 (1994) (plaintiffs do not have a vested right in an injunctive decree); see also *Hadix*, 133 F.3d at 943 n.3; *Dougan*, 129 F.3d at 1427-1428; *Gavin*, 122 F.3d at 1090-1091; *Plyler*, 100 F.3d at 374. Moreover, as the court below explained (Pet. App. 20a), Congress's decision to provide for the termination of prospective relief that does not satisfy current legal standards was entirely rational and legitimate. See also *Hadix*, 133 F.3d at 943 n.3; *Gavin*, 122 F.3d at 1091. Petitioners' contention that the PLRA violates the Due Process Clause is therefore without merit.

d. After the judgment below was entered, and after the instant petition for certiorari was filed, a panel of the Ninth Circuit held that Section 3626(b) violates the separation-of-powers principles set forth in *Plaut* and *Klein*. *Taylor*, 1998 WL 214578, at *3-*5 (*Plaut*); *id.* at *8-*9 (*Klein*). The panel did not address the due process issue. *Id.* at *9.

Although the panel's decision in *Taylor* conflicts with the decision below and with the decisions in four other circuits, it does not furnish a ground for granting review in this case. The Solicitor General has authorized the filing of a suggestion for rehearing en banc in *Taylor*, and we have been informed that the State of Arizona also intends to seek en banc review. Because there is a reasonable possibility that the Ninth Circuit will grant en banc review in *Taylor* and eliminate the conflict in the circuits, see Ninth Circuit Rule 35-1, review by this Court at this time is unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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